SENATE STANDING COMMITTEE

FOR THE

SCRUTINY OF BILLS

TENTH REPORT

OF

2003

17 September 2003

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MEMBERS OF THE COMMITTEE

Senator T Crossin (Chair)
Senator B Mason (Deputy Chairman)
Senator G Barnett
Senator D Johnston
Senator J McLucas
Senator A Murray

TERMS OF REFERENCE

Extract from **Standing Order 24**

(1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:

(i) trespass unduly on personal rights and liberties;

(ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;

(iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;

(iv) inappropriately delegate legislative powers; or

(v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

(b) The Committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

TENTH REPORT OF 2003

The Committee presents its Tenth Report of 2003 to the Senate.

The Committee draws the attention of the Senate to clauses of the following bills which contain provisions that the Committee considers may fall within principles 1(a)(i) to 1(a)(v) of Standing Order 24:

Family Law Amendment Bill 2003

National Animal Welfare Bill 2003

Student Assistance Amendment Bill 2003

Family Law Amendment Bill 2003

Introduction

The Committee dealt with this bill in *Alert Digest No. 2 of 2003*, in which it made various comments. The Attorney-General responded to those comments in a letter dated 8 July 2001.

In its *Eighth Report of 2003*, the Committee sought further advice from the Attorney-General concerning the impact of retrospectivity of the amendment contained in item 1 of Schedule 5. The Attorney-General has further responded in a letter dated 9 September 2003. A copy of the letter is attached to this report. An extract from the *Alert Digest* and relevant parts of the Attorney-General's response are discussed below.

Extract from Alert Digest No. 2 of 2003

This bill was introduced into the House of Representatives on 12 February 2003 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the *Family Law Act 1975* to clarify those provisions of the Act dealing with property and financial interests, including:

- providing a clear power for courts exercising jurisdiction under the Act to make orders binding on third parties when dealing with property settlement proceedings under the Act;
- removing the requirement to register parenting plans;
- clarifying the power of the Court to use electronic technology, including video and telephonic links;
- reflecting changes to the structure and operation of the Family Court of Australia;
- improving the parenting compliance regime;
- varying provisions relating to the operation of financial agreements;
- allowing for orders and injunctions to be binding on third parties; and

- making miscellaneous and technical amendments.

The bill also contains application provisions.

Retrospective commencement
Schedules 4, 5 and 7

By virtue of items 6, 8, 10, 12, 14, 15, 17, 20, 22 and 24 in the table to subclause 2(1) of this bill, the amendments proposed by various items in Schedules 4, 5 and 7 would commence immediately after the commencement of Schedule 2 to the *Family Law Amendment Act 2000*, which occurred on 27 December 2000. The Explanatory Memorandum does not indicate whether any of these amendments would adversely affect any person. All that that Memorandum does is to refer to the fact that various items in those Schedules are to commence immediately after the commencement of the 2000 Amendment Act (although it might be noted that the numbering of the items in the various Schedules is not in accordance with the numbering either later in the Explanatory Memorandum or in the bill itself). The Explanatory Memorandum goes on to assert that "the effect of the actual provisions is described below." Unfortunately, that promise is not completely fulfilled. The explanations of the effect of the particular items in each Schedule does not address the fact that the amendment has retrospective effect, and does not advise whether that retrospectivity will adversely affect any person. The Committee therefore **seeks the Attorney-General's advice** on this point.

Pending the Attorney-General's advice, the Committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Relevant extract from the response from the Attorney-General dated 8 July 2003

> The Committee has expressed concern that the retrospective provisions in Schedules 4, 5 and 7 may 'trespass unduly on personal rights and liberties'. The Committee is also concerned that the affect of transitional provisions in Schedule 6 will be to import retrospectivity to the provisions in a way that will again 'trespass unduly on personal rights and liberties'. These issues are discussed below.
>
> The Committee also notes an inconsistency in the numbering of the provisions between the Explanatory Memorandum and the Bill. I note that the numbering of the

commencement provisions in the Bill and the body of the Explanatory Memorandum is correct. However, there is an error in paragraphs 4 & 5 of Clause 2 of the Explanatory Memorandum where a summary of commencement dates is provided. A draft Correction to the Explanatory Memorandum in relation to this is attached for information.

In relation to retrospectivity, I note that a number of items will operate from the commencement of Schedule 2 of the *Family Law Amendment Act 2000* (FLAA 2000) which occurred on 27 December 2000. This reflects the Government's intention when the FLAA 2000 was enacted. I will address each schedule in detail.

Schedule 4 – parenting compliance

In the FLAA 2000, the Government introduced a three stage parenting compliance regime. One aim of that regime was to facilitate the better enforcement of parenting orders by courts exercising jurisdiction under the *Family Law Act 1975* (the Family Law Act). One difficulty that has emerged with this new regime has been that such courts do not have sufficient flexibility when dealing with the myriad of circumstances surrounding the making of orders affecting children. There are also some technical problems with the new regime as outlined below.

Some of the retrospective amendments in this schedule allow the court greater flexibility in the range of orders and sanctions that they can make to enforce orders. A number of the amendments also address minor drafting errors in the FLAA 2000 and ensure that the original intention of that Act is implemented. Retrospectivity of these provisions will be beneficial to clients seeking to enforce court orders about parenting against a party who has breached the terms of the order, which is a key issue for many family law clients.

Item 2 amends paragraph 65T(1)(b), which relates to the obligations of the court where there is an application to deal with a contravention of an order. An incorrect reference to section 112AD (the general sanctions for failure to comply with an order) is replaced with a reference to Division 13A of Part VII (consequences of failure to comply with orders that affect children). Under the changes made by the FLAA 2000, all remedies for breaches of orders affecting children are now contained in Division 13A. Without this amendment section 65T is effectively inoperative as there never will be an application before the court to deal with an offender under section 112AD, which is in Part XIIIA.

Items 4 and 5 amend the definition of orders affecting children to ensure only contraventions of the listed types of undertakings and subpoenas can be captured under Division 13A of Part VII. As currently drafted the provision may include undertakings and subpoenas that relate to other proceedings under the Family Law Act, such as property settlement proceedings. This was not the Government's original intention.

Items 9 and 10 relate to a change to the definition of primary order to ensure that slight variations of existing orders are still regarded as breaches of the original order. Without this amendment, slight changes to the original order could mean that the

three stage parenting compliance regime effectively starts again with each minor change to an order.

Items 11 to 13 ensure that all previous findings of contraventions can be counted as previous contraventions for the purposes of the parenting compliance regime. It has been argued that the existing provisions do not include contraventions of orders affecting children where a person does not prove that they had a reasonable excuse. Subsection 112AD(1) of the Family Law Act, as it was previously drafted, dealt with contraventions of orders other than residence, contact or specific issues orders. It would have applied, for example, to injunctions made in relation to children. That subsection did not require the person to prove they had a reasonable excuse for contravening the order. Arguably, breaches of such orders are not caught in the current wording of breaches that can be 'counted' for the purposes of the parenting compliance regime in Division 13A of Part VII. This amendment ensures that the original intention of the provisions is implemented.

Items 25 to 27 ensure that arrangements in place with States and Territories extend to include proceedings affecting children. This change does away with the need to bring into force new agreements with the States and Territories with the consequent delays that would ensue.

Schedule 5 – financial agreements

Item 1 amends subsection 90F(1). Section 90F is designed to discourage binding financial agreements, in relation to the maintenance of a party, being made that have the effect of one party relying on an income tested pension rather than on payments from the other party. As currently drafted, the provision requires the court to consider the position of the parties when the agreement was made. There may be many years before the agreement comes into effect.

The amendment to section 90F(1) allows the court to consider the circumstances of the party at the time the agreement takes effect, rather than when it was made. This is contrary to the general rule that if an issue has been dealt with in a financial agreement, the court does not have jurisdiction to make an order. This means that if a party is unable to support himself/herself without government income support, then the court may make a maintenance order, notwithstanding the agreement.

Retrospective amendment to this provision is warranted in the circumstances. The Government's intention has always been to ensure that financial agreements can be set aside by the court in circumstances where the consequence of the agreement is such that a party can only support themselves by relying upon the public purse notwithstanding that their spouse may well be able to make maintenance payments. The retrospective application of this section is expected to have a minimal impact. It is justified given the potential savings in income support.

Item 4 amends section 90L to correct an error in the drafting of FLAA 2000 to ensure that financial agreements are not liable for duty under Commonwealth and State law. This reflects the Government's intention at the time of the FLAA 2000 and should be beneficial to family law clients.

For your information, I further propose to include in the Bill an amendment to section 90C of the Family Law Act, which will also operate retrospectively from the commencement of the FLAA 2000. Section 90C provides for binding financial agreements to be made during a marriage. The Government's intention at the time of introducing this provision in the FLAA 2000, was that such agreements could be made both before and after the breakdown of a marriage but before the dissolution of marriage. However, there is some uncertainty as to whether section 90C operates to include financial agreements made post-separation but prior to divorce. Thus, I propose that the section be amended to clarify this uncertainty.

The retrospective operation of this amendment is necessary to give effect to the Government's original intention. It does not impact adversely on anyone who has made such a financial agreement, as these parties would have relied on the Government's intention that they were able to make such an agreement during the period after separation but before the dissolution of the marriage.

Schedule 7

The retrospective amendments in Schedule 7 relate to a number of drafting problems unintentionally introduced by the FLAA 2000. Given that these amendments correct minor drafting issues which were not intended, it is appropriate that they be retrospective, otherwise there will potentially be anomalies in the way that parties to family law proceedings are treated.

Item 20 corrects a drafting error in the parenting compliance regime provisions of the FLAA 2000. There is an incorrect reference to section 70NM relating to provision of bonds imposed as part of the third stage of the parenting compliance regime. The change is to section 70NJ. This provides the powers of a court when dealing with a person under the third stage of the parenting compliance regime. Subsection 70NJ(4), which gives a court powers to give directions when varying or discharging community service orders, makes reference to community service orders being made under section 70NM. Such orders are made under section 70NL. The provision has no effect as currently drafted. Retrospectivity is required to give the court power to deal with the discharge of such orders that have currently been made.

Item 25 reinstates the courts power to exercise the general powers provided by section 80 when setting aside a transaction designed to defeat the Family Law Act. This was previously available prior to the powers being relocated as a consequence of FLAA 2000. The change was not intended and the amendment is designed to allow the court to exercise these more general powers that it would have been able to do before the relocation of the provision.

Item 26 amends subsection 107(2). Section 107 prevents a person being imprisoned because of a contravention of an order for the payment of money made under the Family Law Act. As previously drafted, subsection 107(2) made it clear that the provisions of subsection 107(1) preventing a person being imprisoned, did not apply to proceedings relating to contempt of the court under what was then Division 3 of Part XIIIA. The FLAA 2000 created a new Part XIIIB dealing with contempt. This

change was not reflected in section 107. The amendment ensures that where the Court is considering subsection 107(2) that a person not be imprisoned for failure to comply with various orders that this will not affect the operation of Part XIIIB, which deals with contempt.

Item 30 corrects an error in section 117A. This section provides a court with the power to order reparations to a person where another person has taken a child away or refused to deliver a child in accordance with a residence or contact order. The section was not amended to reflect the creation of Division 13A of Part VII by the FLAA 2000. The provision still incorrectly refers to proceedings for breach of parenting and contact orders under section 112AD in Division 2 of Part XIIIA.

Item 31 reinstates the power of the court, set out in section 117C, to make further orders after an offer of settlement has been made. As currently drafted subsection 117C(2A) effectively prevents the court from making any further orders after an offer has been accepted.

The Committee thanks the Attorney-General for this response. The Committee notes that the impact of the retrospectivity of the amendments proposed by the items noted in Schedules 4 and 7, and by item 4 of Schedule 5, is clearly explained. The response indicates that these items, for the most part, correct technical deficiencies, give the court greater flexibility in enforcing orders or are expected to be beneficial to family law clients. The Committee makes no further comment on these provisions.

By contrast, the Committee notes that the amendment contained in item 1 of Schedule 5 is expected to have 'minimal impact' which is 'justified given the potential savings in income support'. The Committee **seeks the further advice of the Attorney-General** on the impact of this provision.

Pending the Attorney-General's advice, the Committee draws Senators' attention to the provision, as it may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference

Relevant extract from the further response from the Attorney-General dated 9 September 2003

I am writing in response to comments of the Committee about the Family Law Amendment Bill 2003 (the Bill) in its Eighth Report of 2003, dated 20 August 2003.

In this report the Committee stated that, in relation to the impact of the retrospectivity of the amendment contained in item 1 of Schedule 5 of the Bill, it seeks further advice from me on the impact of this provision, given my earlier advices that it is expected to have 'minimal impact' which is 'justified given the potential savings in income support.'

Item 1 of Schedule 5 amends subsection 90F(1) of the *Family Law Act 1975* (the Act), which is designed to discourage binding financial agreements being made, in relation to the maintenance of a party, that have the effect of one party relying on an income tested pension rather than on maintenance payments from the other party. The amendment in item 1 of Schedule 5 allows the court to consider the circumstances of the party at the time the agreement takes effect, rather than when it was made. It is possible that the financial and other circumstances of one or both of the parties will be different at the time the agreement takes effect (ie in the event of the breakdown of the marriage), to the circumstances of the parties at the time the agreement was made, and that this may impact on either party's ability to financially support themselves during the period after the parties have separated.

In relation to the Committee's request for further advice about the impact of the retrospectivity of this amendment, it is impossible to obtain statistics on the number of financial agreements that have been entered into since the commencement of the financial agreement provisions, in December 2000. This is because there is no legislative requirement for registration of financial agreements. The impetus behind the introduction of the financial agreement provisions was that they would provide separating couples with an opportunity to make binding financial agreements without the intervention of the court. As any existing agreements are agreements between the parties only, there is no potential to find out how many agreements have been entered into and thus how many people may be affected by the amendment to section 90F of the Act.

However, I stress to the Committee that the only parties who will be affected are those who have made a financial agreement during this period and who, after the breakdown of their marriage, will need to rely on income support payments, but the other party is in a position to provide spousal maintenance payments. It is the Government's view that it is not appropriate for a party to rely on income support payments as opposed to relying on spousal maintenance payments from the other party.

Further, the provision only operates upon the application of a party to the marriage and where a court considers it appropriate to do so. The provision does not operate automatically to overturn existing agreements. The court is able to take account of intervening circumstances and in particular the fact that parties may have acted to their detriment on the basis of the agreement.

As I previously advised the Committee, the Government's intention has always been to ensure that financial agreements can be set aside by the court in circumstances where the consequences of the agreement is such that a party can only support themselves by relying upon the public purse, notwithstanding that their spouse may well be able to make maintenance payments.

I note the issue of the retrospective operation of the amendment to section 90F was considered by the Senate Legal and Constitutional Legislation Committee's. It concluded, in its report of 13 August 2003, that:

> "The Committee considers that, despite the retrospective effect of the amendments proposed by Schedule 5, the amendments are appropriate to prevent the possibility of inappropriate calls on government income support . ... Accordingly, the Committee recommends no change to these provisions."

I trust that this information is useful to the Committee.

The Committee thanks the Attorney-General for this further response. In the circumstances, the Committee makes no further comment on this provision.

National Animal Welfare Bill 2003

Introduction

The Committee dealt with this bill in *Alert Digest No. 9 of 2003*, in which it made various comments. Senator Bartlett has responded to those comments in a letter dated 10 September 2003. A copy of the letter is attached to this report. An extract from the *Alert Digest* and relevant parts of the Senator's response are discussed below.

Extract from Alert Digest No. 9 of 2003

[Introduced into the Senate on 11 August 2003 by Senator Bartlett]

The bill seeks to identify animal welfare as a national issue of concern to promote the responsible care and use of animals, and to protect animals from acts of cruelty.

The bill will primarily achieve this by:

- providing for regulations about codes of practice for animal welfare;
- allowing regulations to require compliance with codes of practice;
- imposing a duty of care on persons in charge of animals;
- regulating and prohibiting certain conduct in relation to animals; and
- requiring a person using an animal for scientific purposes to be registered, and to comply with any scientific use code of practice and a duty of care.

The bill establishes a National Animal Welfare authority to co-ordinate, monitor and review Commonwealth responsibilities for animal welfare, and to appoint inspectors to ensure the welfare, protection and rights of animals.

It also contains a regulation-making power.

Issue of warrant
Clause 22

The proposer of this bill has, in commenting on clause 18 in the Explanatory Memorandum, acknowledged the 'fundamental legislative principle that power to enter premises should be conferred only with a warrant issued by a judicial officer.' Clause 22 would allow an inspector to apply for a warrant from a magistrate or a justice of the peace. The Committee notes, however, that a justice of the peace is not a judicial officer, and **seeks the advice of the Senator sponsoring the bill** as to why the legislative principle referred to was not applied in the drafting of this clause.

Pending the Senator's advice, the Committee draws Senators' attention to the provision, as it may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Relevant extract from the response from the Senator

> Although the Committee cited Paragraphs 18(1)(d) to (g) and Clause 22, it would appear that the Committee is satisfied with the justification provided within the actual provision of Paragraphs 18(1) (d) to (g). With respect to Clause 22, however, it is clear that the identification of a justice of the peace as a judicial officer is not correct and therefore needs to be amended.
>
> Accordingly, I will not seek to amend Paragraphs 18(1) (d) to (g); however, Clause 22 will be amended when the Bill is re-drafted or debated as per the direction of the Committee.
>
> Thank you for your advice.

The Committee thanks the Senator for this response, and for his undertaking to amend the bill.

Student Assistance Amendment Bill 2003

Introduction

The Committee dealt with this bill in *Alert Digest No. 8 of 2003*, in which it made various comments. The Minister for Education, Science and Training has responded to those comments in a letter dated 12 September 2003. A copy of the letter is attached to this report. An extract from the *Alert Digest* and relevant parts of the Minister's response are discussed below.

Extract from Alert Digest No. 8 of 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Education, Science and Training]

The bill amends the *Student Assistance Act 1973*:

- to close the Student Financial Supplement Scheme to new applications from ABSTUDY students from 1 January 2004 and continue loan repayment arrangements for existing loans; and
- to extend the regulation-making power relating to notifications.

Regulations
Schedule 2, item 1

Proposed new subsection 48(2) of the *Student Assistance Act 1973*, to be inserted by item 1 of Schedule 2 to this bill, would permit the making of regulations under that Act which may 'apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time.' The Committee has previously commented on provisions allowing regulations to incorporate material as it exists 'from time to time', noting especially the difficulty of ensuring effective parliamentary scrutiny where such material is incorporated.

Although the Explanatory Memorandum states that the purpose of this provision is to 'eliminate the need to make new regulations under the Act whenever guidelines for the non-statutory ABSTUDY and Assistance for Isolated Children schemes are altered', the new subsection, as drafted, goes very much wider than that. The Committee therefore **seeks the Minister's advice** as to why the new subsection was drafted in such broad terms, and whether it could not be expressed to more closely give effect to its avowed purpose.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the Committee's terms of reference.

Relevant extract from the response from the Minister

The Committee states that the effect of proposed new subsection 48(2) of the *Student Assistance Act 1973* (the Act) is much wider than the purpose stated in the Explanatory Memorandum. I would comment as follows:

- Section 48 of the Act has the effect of imposing an obligation on beneficiaries of ABSTUDY, Assistance for Isolated Children (AIC) schemes or financial supplementary for tertiary students scheme (SFSS) to notify the Department within 14 days of the happening of a "prescribed event" in accordance with the regulations.
- *Student Assistance Regulations 2003* (the Regulations) were recently made to prescribe these events in relation to the ABSTUDY and AIC schemes.
- The Regulations did not provide for "prescribed events" in relation to the SFSS because the Government had already decided to close the SFSS. I do not intend to recommend the making of any future regulations to prescribe events relating to the SFSS scheme for the purpose of section 48 of the Act.
- The Regulations refer to ABSTUDY/AIC Policy Manuals as in force at a particular time. The "Policy Manuals" are the guidelines I approved for these non-statutory schemes. As stated in the Explanatory Memorandum, the proposed new subsection 48(2) would eliminate the need to alter the regulations whenever I update these guidelines. However, under proposed new subsection 48(2) any changes to the guidelines would not alter "the prescribed events" for ABSTUDY/AIC schemes which can only be altered by amending the Regulations.

In summary, as section 48 can only impose an obligation on a person to notify an event where that event is prescribed in regulations (which either House of Parliament may disallow), I do not agree that proposed new subsection 48(2) insufficiently exposes the exercise of legislative power to parliamentary scrutiny.

The Committee thanks the Minister for this response.

Trish Crossin
Chair

ATTORNEY-GENERAL
THE HON DARYL WILLIAMS AM QC MP

03/8939 9 SEP 2003

Senator the Hon Trish Crossin
Chair
Senate Standing Committee for the
Scrutiny of Bills
Parliament House
Canberra ACT 2600

Dear Senator Crossin

I am writing in response to comments of the Committee about the Family Law Amendment Bill 2003 (the Bill) in its Eighth Report of 2003, dated 20 August 2003.

In this report the Committee stated that, in relation to the impact of the retrospectivity of the amendment contained in item 1 of Schedule 5 of the Bill, it seeks further advice from me on the impact of this provision, given my earlier advices that it is expected to have 'minimal impact' which is 'justified given the potential savings in income support.'

Item 1 of Schedule 5 amends subsection 90F(1) of the *Family Law Act 1975* (the Act), which is designed to discourage binding financial agreements being made, in relation to the maintenance of a party, that have the effect of one party relying on an income tested pension rather than on maintenance payments from the other party. The amendment in item 1 of Schedule 5 allows the court to consider the circumstances of the party at the time the agreement takes effect, rather than when it was made. It is possible that the financial and other circumstances of one or both of the parties will be different at the time the agreement takes effect (ie in the event of the breakdown of the marriage), to the circumstances of the parties at the time the agreement was made, and that this may impact on either party's ability to financially support themselves during the period after the parties have separated.

In relation to the Committee's request for further advice about the impact of the retrospectivity of this amendment, it is impossible to obtain statistics on the number of financial agreements that have been entered into since the commencement of the financial agreement provisions, in December 2000. This is because there is no legislative requirement for registration of financial agreements. The impetus behind the introduction of the financial agreement provisions was that they would provide separating couples with an opportunity to make binding financial agreements without the intervention of the court. As any existing agreements are agreements between the parties only, there is no potential to find out how many agreements have been entered into and thus how many people may be affected by the amendment to section 90F of the Act.

However, I stress to the Committee that the only parties who will be affected are those who have made a financial agreement during this period and who, after the breakdown of their marriage, will need to rely on income support payments, but the other party is in a position to provide spousal maintenance payments. It is the Government's view that it is not appropriate

for a party to rely on income support payments as opposed to relying on spousal maintenance payments from the other party.

Further, the provision only operates upon the application of a party to the marriage and where a court considers it appropriate to do so. The provision does not operate automatically to overturn existing agreements. The court is able to take account of intervening circumstances and in particular the fact that parties may have acted to their detriment on the basis of the agreement.

As I previously advised the Committee, the Government's intention has always been to ensure that financial agreements can be set aside by the court in circumstances where the consequences of the agreement is such that a party can only support themselves by relying upon the public purse, notwithstanding that their spouse may well be able to make maintenance payments.

I note the issue of the retrospective operation of the amendment to section 90F was considered by the Senate Legal and Constitutional Legislation Committee's. It concluded, in its report of 13 August 2003, that:

> "The Committee considers that, despite the retrospective effect of the amendments proposed by Schedule 5, the amendments are appropriate to prevent the possibility of inappropriate calls on government income support. ... Accordingly, the Committee recommends no change to these provisions."

I trust that this information is useful to the Committee.

Yours sincerely

Daryl Williams

DARYL WILLIAMS

PARLIAMENT OF AUSTRALIA • THE SENATE

Andrew Bartlett

Leader of the Australian Democrats
Senator for Queensland

Senator Trish Crossin
Chair
Standing Committee for the Scrutiny of Bills
Parliament House
Canberra 2600 ACT

Dear Senator Crossin

National Animal Welfare Bill 2003

I thank you for your recent correspondence in which the Standing Committee for the Scrutiny of Bills drew attention to two provisions contained within the Australian Democrats *National Animal Welfare Bill 2003*.

Although the Committee cited Paragraphs 18 (1) (d) to (g) and Clause 22, it would appear that the Committee is satisfied with the justification provided within the actual provision of Paragraphs 18 (1) (d) to (g). With respect to Clause 22, however, it is clear that the identification of a justice of the peace as a judicial officer is not correct and therefore needs to be amended.

Accordingly, I will not seek to amend Paragraphs 18 (1) (d) to (g); however, Clause 22 will be amended when the Bill is re-drafted or debated as per the direction of the Committee.

Thank you for your advice.

Yours sincerely

Senator Andrew Bartlett
Leader of the Australian Democrats

10 September 2003

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MINISTER FOR EDUCATION, SCIENCE AND TRAINING
THE HON DR BRENDAN NELSON MP

12 SEP 2003

Senator Trish Crossin
Chair, Standing Committee on Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

Dear Trish Crossin

I refer to a letter dated 14 August 2003 from the Secretary to the Committee, drawing my attention to the Committee's comments on the Student Assistance Amendment Bill 2003 (the Bill) in the Scrutiny of Bills Alert Digest No. 8 of 13 August 2003.

The Committee states that the effect of proposed new subsection 48(2) of the *Student Assistance Act 1973* (the Act) is much wider than the purpose stated in the Explanatory Memorandum. I would comment as follows:

- Section 48 of the Act has the effect of imposing an obligation on beneficiaries of ABSTUDY, Assistance for Isolated Children (AIC) schemes or financial supplementary for tertiary students scheme(SFSS) to notify the Department within 14 days of the happening of a "prescribed event" in accordance with the regulations.
- *Student Assistance Regulations 2003* (the Regulations) were recently made to prescribe these events in relation to the ABSTUDY and AIC schemes.
- The Regulations did not provide for "prescribed events" in relation to the SFSS because the Government had already decided to close the SFSS. I do not intend to recommend the making of any future regulations to prescribe events relating to the SFSS scheme for the purpose of section 48 of the Act.
- The Regulations refer to ABSTUDY/AIC Policy Manuals as in force at a particular time. The "Policy Manuals" are the guidelines I approved for these non-statutory schemes. As stated in the Explanatory Memorandum, the proposed new subsection 48(2) would eliminate the need to alter the regulations whenever I update these guidelines. However, under proposed new subsection 48(2) any changes to the guidelines would not alter "the prescribed events" for ABSTUDY/AIC schemes which can only be altered by amending the Regulations.

In summary, as section 48 can only impose an obligation on a person to notify an event where that event is prescribed in regulations (which either House of Parliament may disallow), I do not agree that proposed new subsection 48(2) insufficiently exposes the exercise of legislative power to parliamentary scrutiny.

Yours sincerely

BRENDAN NELSON

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